

§ 1786.164

supply borrower enter into a supplement to the outstanding wholesale power contract providing substantially as follows:

SAMPLE CONTRACT TERMS

So long as any of the notes evidencing secured loans of the power supply borrower are outstanding, the borrower will not, without the approval in writing of the power supply borrower and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The power supply borrower will not unreasonably withhold or condition its consent to any such, reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The power supply borrower will not withhold or condition such consent except in cases where to do otherwise would result in rate increases for the other members of the power supply borrower or impair the ability of the power supply borrower to repay its secured loans in accordance with their terms, or adversely affect system performance in a material way. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or dissolution or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the power supply borrower's consent, so long as the borrower shall pay such portion of the outstanding indebtedness on the power supply borrower's notes or other obligations as shall be determined by the power supply borrower with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and power supply borrower may require either: (1) To eliminate any adverse effect that such action seems likely to have on the rates of the other members of the power supply borrower, or

(2) To assure that the power supply borrower's ability to repay the secured loans and other obligations of the power supply borrower in accordance with their terms is not impaired.

The Administrator may require, among other things, that any payment owed under (2) of the preceding sentence that represents a portion of the power supply borrower's indebtedness on Notes shall be paid by the borrower in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Notes for application by them as prepay-

ments in accordance with the provisions of such documents, or be paid to the power supply borrower and held and invested in a manner satisfactory to the Administrator.

[End of sample contract terms]

(b) The Administrator may exempt a borrower from the requirement to enter into a supplement to its outstanding wholesale power contract if the Administrator determines that such requirement is burdensome and unnecessary in light of the provisions of the existing wholesale power contract, other security arrangements of the power supply borrower, and any other relevant facts and circumstances. Normally such exemption will be granted only with the concurrence of the power supply borrower.

§ 1786.164 Loan fund audit.

In the event that a borrower shall prepay all its outstanding electric loans RUS shall have the right to audit within six (6) months of closing transactions involving the RUS Construction Fund Account established and maintained by the borrower pursuant to the terms of the RUS Loan Contract and to inspect all books, records, accounts, and other documents and papers of the borrower. Should RUS determine that the borrower has made disbursements of funds advanced pursuant to the RUS Loan Contracts which do not comply with the requirements thereof, the borrower shall be required to pay the RUS an amount equal to the difference between the amount which the borrower prepaid under this subpart with respect to such advances, and the amount which the borrower would otherwise have been required to return to the RUS as a result of noncompliance if the borrower had not prepaid such advances, plus interest. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.165 Reporting.

Borrowers that no longer have any loans made or guaranteed by RUS and are considering applying for other financial assistance pursuant to the RE Act are encouraged to file the end-of-year operating report, RUS Form 7.